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No. 80-561

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CONTROL DATA CORPORATION, *Petitioner,*

v.

POTTER INSTRUMENT CO., *Respondent.*

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Now comes petitioner and replies to arguments first raised in the respondent's brief in opposition to the petition for issuance of a writ of certiorari.

ISSUES OF IMPERATIVE PUBLIC IMPORTANCE EXIST

Petitioner has already stated in its petition why this case raises issues of imperative public importance so as to justify settlement now. Therefore, these reasons will not be further discussed in this reply, except to emphasize the point that the decision below denying petitioner's motion to dismiss the appeal perpetuates a split in the circuits and thereby threatens the goal of uniformity in federal procedure and in the proper exercise of federal jurisdiction. The importance of uniformity in these matters has long been recognized by this Court and in at least two specific instances, has been the very basis by which this Court granted certiorari to review issues of appellate jurisdiction prior to judgment; *e.g. Sears, Roebuck & Co.* v. *Mackey,* 351 U.S. 427, at 429-30, 100

L.Ed. 1297, at 1302, 76 S.Ct. 895 (1955) ("Because of the importance of the issue in determining appellate jurisdiction and because of a conflict of judicial views on the subject, we granted certiorari."); and *Cold Metal Process Co.* v. *United Engineering & Foundry Co.,* 351 U.S. 445, at 450-51, 100 L.Ed. 1311, at 1317, 76 S.Ct. 904 (1955):

> "However, before any decision was rendered on the merits, we granted certiorari upon Cold Metal's petition questioning the jurisdiction of the Court of Appeals to entertain the appeal."

See also, Hanna v. *Plumer,* 380 U.S. 460, at 463, 14 L.Ed. 2d 8, at 12, 85 S.Ct. 1136 (1965) ("Because of the threat to the goal of uniformity of federal procedure posed by the decision below we granted certiorari"); *LaBuy* v. *Howes Leather Co.,* 352 U.S. 249, at 251, 1 L.Ed. 2d 290, at 294, 77 S.Ct. 309 (1957) ("The importance of the question in the administration of the Federal Rules of Civil Procedure, together with the uncertainty existing among the Courts of Appeals, led to our grant of a writ of certiorari.").

THE CONTROVERSY IS RIPE FOR REVIEW; AN UNDERSTANDING OF THE TECHNICAL ASPECTS OF THE CASE IS WHOLLY UNNECESSARY

In reply to respondent's arguments at pages 5-7 of its brief, petitioner respectfully submits that the immediate case is ripe for review and the arguments provided by the respondent to the contrary are inappropriate.

Respondent argues to the effect that an understanding of the technical subject matter of the case is necessary for resolution of the immediate controversy.

Petitioner emphasizes that the original action below was dismissed for laches and estoppel, not on the merits of any technical issue that the original complaint might have put to issue. It is also clear that the questions presented in the immediate petition do not raise any technical issues nor any legal issues concerning laches and estoppel as is now involved in the appeal. Instead, the questions here presented raise only important issues of federal jurisdiction and procedure. For these reasons, petitioner respectfully submits that an understanding of the technical aspects of the case and the merits of the laches and estoppel issues are wholly unnecessary for the resolution of the immediate controversy.

Moreover, there would be no need for this Court, nor the Court of Appeals below, to ever have to entertain the other issues of the case were this Court to grant the petition for certiorari and to ultimately dismiss the appeal below at this stage of the proceedings. It would be a waste of judicial resources to require the appeal to run its entire course before this jurisdictional matter can be properly resolved.

CONCLUSION

This Court should act favorably on the petition and issue a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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